

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

AT RICHMOND, JULY 13, 2006

PETITION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUE-2006-00075

For Certain Initial Determinations with  
Regard to Virginia Code § 56-585 G

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ORDER FOR NOTICE AND HEARING

On June 30, 2006, Virginia Electric and Power Company ("Dominion Virginia Power" or "Company") filed a Petition with the State Corporation Commission ("Commission") seeking certain initial determinations with regard to § 56-585 G of the Code of Virginia. By way of background, the Company states as follows: (1) "[i]n 2004, the General Assembly amended the Virginia Electric Utility Restructuring Act<sup>1</sup> by adding a new subsection, Virginia Code § 56-585 G ('the Provision'), regarding construction of a coal-fired generation facility in the coalfield region of Virginia ('Coal Plant' or 'Plant');" and (2) "[t]he Provision states that its purpose is '[t]o ensure a reliable and economic supply of electricity, and to promote economic development,' and it declares that the construction of a Plant 'that utilizes energy resources located in the Commonwealth is in the public interest, and in determining whether to approve such [a] facility, the [State Corporation] Commission shall liberally construe the provisions of this title.'"<sup>2</sup>

Dominion Virginia Power asserts that it "has taken a number of initial steps that will enable swift progress on the Plant if the Company decides to move forward with the project and

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<sup>1</sup> Va. Code §§ 56-576 *et seq.*

<sup>2</sup> Petition at 1 (quoting Va. Code § 56-585 G).

it receives the necessary approvals."<sup>3</sup> Dominion Virginia Power further explains that "[i]n May 2006, the Company announced that the preliminary site selected for the Coal Plant is in Virginia City, Virginia, just outside of St. Paul, Virginia, in Wise County."<sup>4</sup> The Coal Plant's "estimated output will be 500-600 MW," fuel supply for the Coal Plant "will consist primarily of run-of-mine coal from various mines in the coalfield region of the Commonwealth," and the Plant "will also allow the use of opportunity fuels such as coal waste and biomass (wood chips)."<sup>5</sup>

The Company states that the "Provision directs that an investor-owned distributor designated as a default service provider that constructs, or causes to be constructed, such a facility 'to meet its native load and default service obligations' shall have the 'right to recover the costs of the facility, including allowance for funds used during construction [(AFUDC)], life-cycle costs, and costs of infrastructure associated therewith, plus a fair rate of return, through its rates for default service.'"<sup>6</sup> Dominion Virginia Power asserts that "[n]o distributor would seek approval for such unit without first making detailed and reasoned decisions, supported by as much assurance as possible, concerning many issues."<sup>7</sup> Thus, the Company contends that although the Commission "must ultimately consider, and approve or deny, any petition to construct the Plant that might be filed," "[e]ven prior to the point at which it might receive such a petition ... the Commission can greatly assist in accomplishing the goals set by the General

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<sup>3</sup> *Id.* at 5.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 6.

<sup>6</sup> *Id.* at 8 (quoting Va. Code § 56-585 G).

<sup>7</sup> *Id.* at 2.

Assembly by determining several initial questions that are implicit within the general provisions of the legislation."<sup>8</sup>

In this regard, the Company emphasizes that it is not now requesting the Commission to approve construction of the Plant: "[T]he present filing is not a petition for approval to construct a Plant under the Provision. Rather, it is a request that the Commission decide important prerequisite issues that will greatly facilitate the decision-making process of [Dominion Virginia Power], the Petitioner herein, with regard to whether the Company should later seek approval to build a Plant."<sup>9</sup> Specifically, "the Company respectfully requests that the Commission issue an order that (1) approves the calculation and implementation of an [AFUDC] rate for the period during the planning and construction of a Plant pursuant to Virginia Code § 56-585 G, (2) approves a 'risk premium' during the commercial operation of the facility, and (3) grants exemptions from certain portions of the electric utility bidding rules found at 20 VAC 5-301-10 *et seq.* ('Rules')."<sup>10</sup>

The Company "has determined that a return on equity of 12% is required for purposes of calculating AFUDC for the period during the planning and construction of the Plant."<sup>11</sup> The Company "has also determined that an appropriate return on equity applicable to this Plant during its commercial operation life requires an additional 200 basis points to the return on common equity periodically determined for the Company in general rate cases for its distribution rates, following termination of capped rates."<sup>12</sup> In reference to the bidding Rules, Dominion

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<sup>8</sup> *Id.* at 2-3.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 11 (footnote omitted).

<sup>12</sup> *Id.* at 11.

Virginia Power asserts that "although the Company may be prepared to accept the numerous risks associated with a Coal Plant if it owns and operates that Plant, assuming appropriate regulatory recognition of those risks, it would simply not be prudent to incur long-term contractual obligations to a third party through a power purchase agreement under such circumstances."<sup>13</sup>

Finally, Dominion Virginia Power states that it "recognizes the importance of the Coal Plant to the Commonwealth, but it needs certain critical assurances that the present proceeding can provide in order to proceed with this project."<sup>14</sup> The Company, however, "acknowledges that no action the Commission takes with respect to the present Petition will constitute approval for construction of the Plant under the Provision. That approval must be the subject of a separate filing and a separate proceeding in the future, when the merits of such a Plant may be fully considered by all interested parties."<sup>15</sup>

NOW UPON CONSIDERATION of the Petition, the Commission is of the opinion and finds that this matter shall be docketed, a procedural schedule shall be established, and the Company shall give notice to the public of its Petition, all as prescribed below.

Accordingly, IT IS HEREBY ORDERED THAT:

- (1) The Company's Petition is docketed and assigned Case No. PUE-2006-00075.
- (2) A copy of the Petition and this Order for Notice and Hearing, as well as other documents now or hereafter filed in this matter, shall be available for public inspection in the Commission's Document Control Center located on the First Floor of the Tyler Building, 1300 East

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<sup>13</sup> *Id.* at 14.

<sup>14</sup> *Id.* at 3.

<sup>15</sup> *Id.* at 3-4.

Main Street, Richmond, Virginia, between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday. A copy of the Petition also may be obtained by requesting a copy from counsel for the Company, Edward L. Flippen, Esquire, McGuireWoods, LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030. Upon receipt of a request for a copy of the Petition, the Company shall serve a copy of the same upon the requesting party within three (3) business days of such request. If acceptable to the requesting party, the Company may provide the Petition by electronic means. In addition, copies of the Commission's Order For Notice and Hearing and other orders entered in this docket, the Commission's Rules of Practice and Procedure, as well as other information concerning the Commission and the statutes it administers, may be viewed on the Commission's website at <http://www.scc.virginia.gov/caseinfo.htm>.

(3) A public hearing shall be convened on October 17, 2006, at 10:00 a.m., before a Commission Hearing Examiner as appointed below, in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive comments from members of the public and to receive evidence in this docket. Any person not participating as a respondent as provided for below may give oral testimony concerning this case as a public witness at the hearing. Public witnesses desiring to make statements at the public hearing need only appear in the Commission's Second Floor courtroom in the Tyler Building at the address set forth above prior to 9:45 a.m. on the day of the hearing and register a request to speak with the Commission's bailiff.

(4) On or before August 14, 2006, the Company shall file with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia, 23218-2118, an original and fifteen (15) copies of any direct testimony and exhibits supporting its Petition.

(5) Any interested person may participate as a respondent in this proceeding by filing, on or before September 18, 2006, an original and fifteen (15) copies of a notice of participation with the Clerk at the address set forth above, and shall simultaneously serve a copy of the notice of participation on counsel to the Company at the address set forth above. Pursuant to Rule 5 VAC 5-20-80 of the Commission's Rules of Practice and Procedure, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Interested parties shall refer in all of their filed papers to Case No. PUE-2006-00075.

(6) Within five (5) business days of receipt of a notice of participation as a respondent, the Company shall serve upon each respondent a copy of this Order for Notice and Hearing, a copy of the Petition, and all materials filed by the Company with the Commission, unless these materials have already been provided to the respondent.

(7) On or before September 18, 2006, each respondent may file with the Clerk an original and fifteen (15) copies of any testimony and exhibits by which it expects to establish its case, along with any legal memorandum in response to the Petition, and shall serve copies of the same on counsel to the Company and on all other respondents. The respondent shall comply with the Commission's Rules of Practice and Procedure, including: 5 VAC 5-20-140, *Filing and service*; 5 VAC 5-20-150, *Copies and format*; and 5 VAC 5-20-240, *Prepared testimony and exhibits*.

(8) On or before September 18, 2006, any interested person may file with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, written comments in this proceeding and shall simultaneously serve a copy on counsel to the Company at the address set forth above. On or before September 18, 2006, any

interested person desiring to submit comments electronically may do so by following the instructions found on the Commission's website: <http://www.scc.virginia.gov/caseinfo.htm>.

(9) On or before October 2, 2006, the Commission's Staff shall file with the Clerk of the Commission an original and fifteen (15) copies of the Staff's testimony and exhibits, along with any legal memorandum in response to the Petition, and shall serve copies of the same on counsel to the Company and all respondents.

(10) On or before October 10, 2006, the Company shall file with the Clerk of the Commission an original and fifteen (15) copies of any rebuttal testimony and exhibits, along with any responsive legal memorandum, and shall serve copies of the same on Staff and all respondents.

(11) On or before August 7, 2006, the Company shall cause the following notice to be published as display advertising (not classified) in newspapers of general circulation throughout the Company's service territory within the Commonwealth of Virginia:

NOTICE TO THE PUBLIC OF  
VIRGINIA ELECTRIC AND POWER COMPANY'S  
PETITION FOR CERTAIN INITIAL DETERMINATIONS  
WITH REGARD TO VIRGINIA CODE § 56-585 G

On June 30, 2006, Virginia Electric and Power Company ("Dominion Virginia Power" or "Company") filed a Petition with the State Corporation Commission ("Commission") seeking certain initial determinations with regard to § 56-585 G of the Code of Virginia. By way of background, the Company states as follows: (1) "[i]n 2004, the General Assembly amended the Virginia Electric Utility Restructuring Act by adding a new subsection, Virginia Code § 56-585 G ('the Provision'), regarding construction of a coal-fired generation facility in the coalfield region of Virginia ('Coal Plant' or 'Plant');" and (2) "[t]he Provision states that its purpose is '[t]o ensure a reliable and economic supply of electricity, and to promote economic development,' and it declares that the construction of a Plant 'that utilizes energy resources located in the Commonwealth is in the public interest, and in determining whether to approve such [a] facility, the [State

Corporation] Commission shall liberally construe the provisions of this title."

Dominion Virginia Power asserts that it "has taken a number of initial steps that will enable swift progress on the Plant if the Company decides to move forward with the project and it receives the necessary approvals." Dominion Virginia Power further explains that "[i]n May 2006, the Company announced that the preliminary site selected for the Coal Plant is in Virginia City, Virginia, just outside of St. Paul, Virginia, in Wise County." The Coal Plant's "estimated output will be 500-600 MW," fuel supply for the Coal Plant "will consist primarily of run-of-mine coal from various mines in the coalfield region of the Commonwealth," and the Plant "will also allow the use of opportunity fuels such as coal waste and biomass (wood chips)."

The Company emphasizes that it is not now requesting the Commission to approve construction of the Plant: "[T]he present filing is not a petition for approval to construct a Plant under the Provision. Rather, it is a request that the Commission decide important prerequisite issues that will greatly facilitate the decision-making process of [Dominion Virginia Power], the Petitioner herein, with regard to whether the Company should later seek approval to build a Plant." Specifically, "the Company respectfully requests that the Commission issue an order that (1) approves the calculation and implementation of an [AFUDC] rate for the period during the planning and construction of a Plant pursuant to Virginia Code § 56-585 G, (2) approves a 'risk premium' during the commercial operation of the facility, and (3) grants exemptions from certain portions of the electric utility bidding rules found at 20 VAC 5-301-10 *et seq.* ('Rules')."

The Company "has determined that a return on equity of 12% is required for purposes of calculating AFUDC for the period during the planning and construction of the Plant." The Company "has also determined that an appropriate return on equity applicable to this Plant during its commercial operation life requires an additional 200 basis points to the return on common equity periodically determined for the Company in general rate cases for its distribution rates, following termination of capped rates." In reference to the bidding Rules, Dominion Virginia Power asserts that "although the Company may be prepared to accept the numerous risks associated with a Coal Plant if it owns and operates that Plant, assuming appropriate regulatory recognition of those risks, it would simply not be prudent to incur



long-term contractual obligations to a third party through a power purchase agreement under such circumstances."

A copy of the Petition and the Commission' Order for Notice and Hearing, as well as other documents now or hereafter filed in this matter, shall be available for public inspection in the Commission's Document Control Center located on the First Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia, between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday. A copy of the Petition also may be obtained by requesting a copy from counsel for the Company, Edward L. Flippen, Esquire, McGuireWoods, LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030. In addition, copies of the Commission's Order For Notice and Hearing and other orders entered in this docket, the Commission's Rules of Practice and Procedure, as well as other information concerning the Commission and the statutes it administers, may be viewed on the Commission's website at <http://www.scc.virginia.gov/caseinfo.htm>.

A public hearing shall be convened on October 17, 2006, at 10:00 a.m., in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive comments from members of the public and to receive evidence in this docket. Any person not participating as a respondent as provided for below may give oral testimony concerning this case as a public witness at the hearing. Public witnesses desiring to make statements at the public hearing need only appear in the Commission's Second Floor courtroom in the Tyler Building at the address set forth above prior to 9:45 a.m. on the day of the hearing and register a request to speak with the Commission's bailiff.

Any interested person may participate as a respondent in this proceeding by filing, on or before September 18, 2006, an original and fifteen (15) copies of a notice of participation with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, and shall simultaneously serve a copy of the notice of participation on counsel to the Company at the address set forth above. Pursuant to Rule 5 VAC 5-20-80 of the Commission's Rules of Practice and Procedure, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Interested parties shall refer in all of their filed papers to Case No. PUE-2006-00075. Interested persons should obtain a copy of the Commission's Order

for Notice and Hearing for additional information about participation as a respondent.

On or before September 18, 2006, any interested person may file with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, written comments in this proceeding and shall simultaneously serve a copy on counsel to the Company at the address set forth above. On or before September 18, 2006, any interested person desiring to submit comments electronically may do so by following the instructions found on the Commission's website: <http://www.scc.virginia.gov/caseinfo.htm>.

#### VIRGINIA ELECTRIC AND POWER COMPANY

(12) On or before August 7, 2006, the Company shall forthwith serve a copy of its Petition and this Order for Notice and Hearing on the Chairman of the Board of Supervisors and county attorney of each county and on the Mayor or Manager of every city and town (or on equivalent officials in counties, towns, and cities having alternate forms of government) in which Dominion Virginia Power provides service. Service shall be made by personal delivery or by first-class mail, postage prepaid, to the customary place of business or residence of the person served.

(13) On or before September 8, 2006, the Company shall file with the Clerk of the Commission proof of the notice required in Ordering Paragraphs (11) and (12).

(14) The Commission's Rules of Practice and Procedure, 5 VAC 5-20-260, *Interrogatories to parties or requests for production of documents and things*, shall be modified for this proceeding as follows: (i) answers shall be served within ten (10) business days after receipt of interrogatories or requests for production of documents; (ii) objections shall be served within seven (7) calendar days after receipt of interrogatories or requests for production of documents; and (iii) motions on the validity of any objections shall be filed within ten (10) calendar days of receipt of any objection.

(15) As provided by § 12.1-31 of the Code of Virginia and the Commission's Rules of Practice and Procedure, 5 VAC 5-20-120, *Procedure before hearing examiners*, a hearing examiner is appointed to conduct all further proceedings in this matter on behalf of the Commission and to issue a final report herein.

(16) This matter is continued pending further Order of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:  
Edward L. Flippen, Esquire, McGuireWoods LLP, One James Center, 901 East Cary Street,  
Richmond, Virginia 23219-4030; and the Commission's Office of General Counsel and  
Divisions of Energy Regulation and Public Utility Accounting.